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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st June 2010

No.4501-li/1(S)-18/2007—L.E.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th January 2010 in I. D. Case No.4 of 2008 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial Dispute between the Management of Samaleswari Regional Co-operative Milk Producer's Union Ltd., Sambalpur and its workman Shri Subash Chandra Nanda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No.4 OF 2008

Dated the 16th January 2010

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of Samaleswari Regional Co-operative Milk Producers Union Ltd., Sambalpur through the 1. General Manager, Samaleswari Regional Co-operative Milk Producers Union Ltd., Sakhipara, Dist. Sambalpur.	... First-party Management
2. The President, Chakuli Milk Producers Co-operative Society Ltd., At/P.O. Chakuli, Atabira, Dist. Bargarh.	

And

Its Workman Shri Subash Chandra Nanda, ... Second-party Workmen
 At/P.O. Godbhaga,
 P.S. Atabira,
 Dist. Bargarh.

Appearances :

Self	..	For the First-party Management No.1
None	..	For the First-party Management No.2
Self	..	For the Second-party Workman

AWARD

This matter arises out of the reference made by the Government of Orissa, Labour & Employment Department, conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) as per Momo No.3744 (6)-L.E., dated 28-3-2008 for adjudication by the schedule question :

“Whether the termination of services of Shri Subash Chandra Nanda by way of refusal of employment with effect from 7-2-2002 by the management of Samaleswari Regional Milk Producers Union Ltd., Sambalpur/Chakuli Milk Producers Co-operative Society is legal and/or justified ? If not, what relief he is entitled to ?”

2. The second-party workman's case stated as follows :

Samaleswari Regional Co-operative Milk Producers Union Ltd., Sambalpur was in the name of Sambalpur District Co-operative Milk Producers Union Ltd., Sambalpur during the year, 1983. The second-party workman was asked by the first-party employer verbally to work on daily wage basis and the second-party workman started working under Livestock Inspector, Godabhaga with effect from 9-9-1983 and his daily rate of wages was Rs.5 per day only. Thereafter the second-party workman was directed by the first-party employer vide Memo No.309, dated 3-4-1986 to work at Chilling Plant, Chiplima and the daily rate of his wages from Rs.5 to Rs.10 per day was enhanced. The second-party workman joined at his new place of work on 3-4-1986. While he was working at Chilling Plant, Chiplima, further the second-party was directed to work as Chakuli Milk Collection Centre vide Memo No.262, dated 11-2-1988 and his daily rate of wages enhanced from Rs.10 per day to Rs.15 per day and the workman continued to work at his new place of work since 11-2-1988.

Further it is alleged from the case of the workman that while the workman was working at Chakuli Milk Collection Centre, the said centre was registered under Orissa Co-operative Society Act and Chakuli Milk Producers Co-operative Society Ltd., Chakuli came to existence and the second-party workman continued to work there as a Secretary in Charge. While the second-party was working at Chakuli M.P.C.S. his wages for the period from August, 2001 to January, 2002 were not paid to him. So the second-party filed a Misc. Case U/s. 33-C (2) of the I. D. Act, 1947 in this Court and got the favourable order. So the President of Chakuli M. P. C. S. Ltd., took unnecessary grudge and with a vindictive attitude snatched away the key of the said society on 7-2-2002 from the second-party workman and refused the second-party to work on and from 7-2-2002. Inspite of several request by the second-party, the first-party managements did not pay any head towards

the second-party. They did not reinstate the second-party in his work. So the second-party made a prayer for an order to reinstate him in service with full back wages, since date of refusal of employment by the Chakuli M. P. C. S., Samaleswari Regional Co-operative Milk Producers Union Ltd., the management till his reinstatement with all other service benefits.

3. As the first-party employer, President Chakuli Milk Producers Co-operative Society Ltd., Chakuli, At. Chakuli Farm, P.O. Larasara, Dist. Bargarh did not appear nor filed any written statement, he was set *ex parte*.

Then the General Manager, Samaleswari Regional Co-operative Milk Producers Union Limited, Sambalpur has filed written statement. As per the written statement, the management admitted that the Samaleswari Regional Co-operative Milk Producers Union Ltd., Sambalpur was in the name of Sambalpur District Co-operative Milk Producers Union Ltd., Sambalpur during the year, 1983. The first-party denied that the second-party was verbally engaged by the first-party and he started working from 9-9-1983. He was not a regular employee since the year 1988. This matter is more than 20 years old, records are not readily available and the then General Manager, Dr. Mahadev Pradhan is already dead. Moreover, the daily wage labourer has no right to claim continuity in his post, when he has not been recruited through regular process of recruitment as per the settled provision of law.

It is further alleged from the written statement that the second-party was working as Secretary of Chakuli Milk Producers Co-operative Society which is an independent society having its own registration under Orissa Co-operative Societies Act and the Society is competent to take their own decisions. The Samaleswari Regional Co-operative Milk Producers Union Limited had/has no administrative relation within the Chakuli Milk Producers Co-operative Society. So when the second-party was appointed as a Secretary of the Chakuli Milk Producers Co-operative Society as paid servant, the second-party accepted this appointment and he became a regular employee of the Chakuli Milk Producers Co-operative Society. The second-party at no point of time raised any objection for his appointment as Secretary of Chakuli Milk Producers Co-operative Society. The Chakuli Milk Producers Co-operative Society was registered in the year 1993. The second-party was the Secretary of this society for sixteen years. The second-party workman is not entitled to claim to be an employee of the Samaleswari Regional Co-operative Milk Producers Union Ltd. after sixteen years service under Chakuli Milk Producers Co-operative Society. As alleged the president of Chakuli M. P. C. S. Ltd. has terminated the service of the second-party on 7-2-2002. The General Manager, Samaleswari Regional Co-operative Milk Producers Union Limited has no administrative control over the Chakuli Milk Producers Co-operative Society Ltd. So the first-party management No.1 is not the appointing authority and the averments made by the second-party in this regard is false. So the second-party is not entitled to get any relief against the General Manager, Samaleswari Regional Co-operative Milk Producers Union Limited.

The second-party workman has filed counter to the written statement filed by the first-party No.1. In the year 1983 the present Samaleswari Regional Co-operative Milk Producers Union Ltd., Sambalpur was in the name of Sambalpur District Co-operative Milk Producers Union Ltd., Sambalpur and the then General Manager of Sambalpur District Co-operative Milk Producers Union Ltd., Sambalpur verbally asked the second-party workman to work under Livestock Inspector,

Godabhaga on daily wages basis. Accordingly the second-party started his work with effect from 9-9-1983. The first-party employer vide Memo No 309, dated 3-4-1986 and Memo No.262, dated 11-2-1988 directed the second-party workman to work at Chilling Plant, Chiplima and Chakuli Milk Collection Centre and enhancing the daily wages on both occasions. In the entire I. D. Act., 1947 there is no adjective word of "permanent" and so also there is no negation for invoking the relief under the I. D. Act. in the event of illegal refusal of employment to a daily rated and monthly paid workman. In obedience to the direction of the first-party employer No.1, the second-party workman continued his services under the management of Chakuli Milk Producers Co-operative Society Limited, Chakuli. The first-party No.1 management came to existence in the year 1978 and 1980 and by that time no recruitment rules was there and as the second-party workman was asked to work at the starting stage of the Sambalpur District Co-operative Milk Producers Union Limited no such appointment letter was issued to him. Most of the employers were also not issued with their appointment letters who are in service. When the second-party workman by the order of first-party employer worked under the management of Chakuli M. P. C. S. for a period of 13/14 years and then the management of Chakuli M. P. C. S. Ltd., Chakuli refused his work without any fault, the second-party workman should return to his parent Milk Society and Samaleswari Regional Co-operative Milk Producers Union Ltd., Sambalpur. So, the workman prayed to pass an order directing the first-party managements to reinstate the second-party workman in his service with all service benefits.

4. Out of the pleadings of the parties, the following issues have been frames :–

"(i) whether the termination of services of Shri Subash Chandra Nanda by way of refusal of employment with effect from 7-2-2002 by the management of Samaleswari Regional Co-operative Milk Producers Union Limited., Sambalpur/ Chakuli Milk Producers Co-operative Society is legal and/or justified ?

(ii) If not, what relief he is entitled to ?"

5. Both the parties have filed their respective documents in support of their claim. The second-party workman has filed documents which are marked as Ext. W 1 to Ext. W 6.

On behalf of the management the management No.1 has filed documents which are exhibited Ext. M 1 to Ext. M 8.

The workman himself Subash Chandra Nanda has been examined as M. W. 1. On behalf of the management Shri Kishore Kumar Naik, General Manager, Samaleswari Regional Co-operative Milk Producers Union Limited has been examined as M. W. 1.

FINDINGS

6. *Issue Nos.(i) and (ii)* –Admittedly, the Samaleswari Regional Co-operative Milk Producers Union Ltd., Sambalpur was in the name of Sambalpur District Co-operative Milk Producers Union Ltd., Sambalpur during the year 1983. The workman claims that he was asked by the first-party employer verbally to work on daily wage basis and accordingly the second-party workman started his work under Live Stock Inspector, Godabhaga with effect from 9-9-1983 and his daily rate of wages was Rs.5 per day. Thereafter the second-party workman was directed by the first-party employer vide Memo No.309, dated 3-4-1986 to work at Chilling Plant and the daily wages enhanced

from Rs.5 per day to Rs.10 per day. Although the management first-party admitted the above fact of the workman but subsequently disputed that the workman is not the employee under the first-party No.1 management. He being the workman under the first-party No.2 management (Chakuli Milk Co-operative Society, Chakuli), the said society is responsible for his reinstatement in service. Admittedly, the workman filed a Misc. Case under Section 33-C (2) of the I. D. Act and got order in his favour by this court and the Chakuli M. P. C. S. by the order of this court released all the wages in favour of the workman second-party as per Ext. W 3.

7. The first-party No.1 pleaded that the second-party relates to a period of more than 20 (twenty) years and Dr. Mahadev Pradhan who was the General Manager of first-party management is now dead. So the first-party management is unable to say whether the then General Manager Late Mahadev Pradhan verbally engaged the second-party workman in the year 1983. The first-party management No.1 General Manager, Milk Union, Sambalpur filed written statement and denied the claim of the second-party workman that he was verbally engaged by the first-party. As per the case of the first-party No.1 a daily wage labourer has no right to claim continuity in his engagement as he has not been recruited through regular process of recruitment as per law. Besides that as per the case of the first-party management the bye-law of the Milk Union and the bye-law of the Chakuli M. P. C. S. are different. As per the bye-law they will recruit and appoint their own staff independently. So there is no connection in between the first-party No.1 and the first-party No.2 so far as the recruitment and appointment are concerned. In the case in hand, the second-party workman Shri Nanda claims that he had joined in the first-party No.1 management and being directed started his work under Live Stock Inspector, Godabhaga with effect from 9-9-1983. However the second-party workman has filed Ext. W.1 letter No.309, dated 3-4-1986 from which it is clear that the engagement of Shri Subash Chandra Nanda, second-party (Labour) at Rs.10 per day basis is ceased at Godabhaga with effect from 4-4-1986. Besides that being directed by the first-party No.1 management he should report at Chilling Plant, Chiplima for engagement in plant work of Rs.10 per day only on daily wage basis. So the first-party management is very much aware about the letter order No.309, dated 3-4-1986. Ext. W-2 letter No.262, dated 11-2-1988. Ext. W. 3 is the copy of order on Misc. case No.6/2002. Ext. W-4 is the copy of letter dated 2-9-2004 issued from General Manager, Samaleswari Regional Co-operative Milk Producers Union Ltd., Sambalpur addressing to the President, Bagbhal Milk Producers Co-operative Society for taking Secretary of M. P. C. S. on deputation by the Milk Union with certain terms and conditions. Ext. W. 5 is the xerox copy of minutes of discussion dated 8-4-1986. Ext. W-6 is the xerox copy of letter No.54, dated 15-4-1988.

8. The first-party No.1 management pleaded that as the first-party No.1 management is independent in its own sphere has no relationship with the first-party No.2 management. It is an admitted fact that the second-party workman was appointed as Secretary of Chakuli M. P. C. S. with effect from 15-12-1989. The representative on behalf of the first-party No.1 management submitted that the second-party workman has not filed any document regarding the above facts. It is the settled principle of law that the admitted fact need not be required to be proved. The first-party No.1 management has written in his written statement that the second-party was appointed as the Secretary of Chakuli Milk Producers Co-operative Society as a paid servant and he became the

regular employee of the Chakuli Milk Producers Co-operative Society. Even the second-party was working as Secretary in the said society for a longer period. So there is no need to prove the admitted fact.

9. The management has filed some documents in support of his case. Ext.M-1 is the bye-law of Sambalpur District Co-operative Milk Producers Union Limited. Ext.M-2 is the bye-law of Chakuli Milk Producers Co-operative Society. Ext.M-3 is the Certificate of Registration dated 31-3-1993. Ext.M-4 is the Resolution dated 29-9-1989. Ext.M-5 is the certified copy of order in Misc. Case No.6 of 2002. Ext.M-6 is the copy of advertisement. Ext.M-7 is the list of eligible candidate. Ext.M-8 is the copy of minutes of interviews. Although the management No.1 raised question regarding recruitment through recruitment process has not filed any documents in this case. The first-party No.1 further pleaded that as per Ext.M-6, 7 and 8, it is clear that after a due process of selection the Secretaries who apply for the job under the Milk Union are selected and appointed, but the second-party had never applied for any job under the Milk Union in response to the advertisement dated 19-8-2000 as Ext.M-6. It is his further case that as per bye-law or in the executive instruction issued by the Managing Director, OMFED-cum-Additional Registrar of Co-operative Society, Orissa for deputation of any employee from the control of the Milk Union to the control of any M. P. C. S. So as per case of the first-party management that the second-party was deputed to work under the first-party to Chakuli M. P. C. S. is not tenable under law. Further the representative of the management pleaded that there is no master and servant relationship with the Milk Union. The first-party management clearly pleaded that the first-party No.2 Chakuli M. P. C. S. was the appointing authority of the second-party.

10. The second-party workman claims his reinstatement in the management. Admittedly the Chakuli M. P. C. S. refused his work and thrown him out from the management without any reason. Admittedly the second-party workman was working under Live Stock Inspector, Godabhaga with effect from 9-9-1983 as a daily wages of Rs.5. Thereafter, he was directed to work at Chilling Plant, Chaplima by the first-party as per order vide Memo No.309, dated 3-4-1986, at the rate of daily wages enhanced from Rs.5 to Rs.10. Admittedly the second-party workman was refused to do his work by the first-party No.2 management on dated 7-2-2002.

Admittedly, the second-party workman was working as Labourer on Daily Wages under the management since 1983 to 7-2-2002. The management has not stated anything regarding the work of the second-party that the second-party was a unskilled labourer and was doing any harm to the management society. Admittedly without any fault of the second-party workman, he was driven out by the management. The second-party workman as skilled worker and good worker was discharging his duties as a labourer to the management since long and admittedly he was appointed as a Secretary in the Chakuli M. P. C. S., Chakuli. So in the facts and circumstances the workman has proved his case alongwith the documents which are relevant. The workman who had rendered service for a long period for the management without doing any harm to the management, is entitled to get the relief. So the first-party No.2 management illegally refuse the services of the second-party workman. The workman has filed the relevant documents and adduce evidence in a proper manner in support of his case and he is entitled to get the relief. Hence the award.

AWARD

The reference is answered on contest in favour of the second-party workman but without cost. The termination of services of Shri Subash Chandra Nanda, workman by way of refusal of employment with effect from 7-2-2002 by the management of Samaleswari Regional Co-operative Milk Producers Union Limited, Sambalpur/Chakuli Milk Producers Co-operative Society is illegal and unjustified. So the managements are directed to reinstate the second-party Shri Subash Chandra Nanda in his post within two months from the date of publication of this award in the *Orissa Gazette*. But the second-party workman is not entitled to get his daily wages during the period i.e. from 7-2-2002 till his reinstatement.

Dictated and corrected by me.

S. MAHAPATRA

16-1-2010

Presiding Officer
Labour Court
Sambalpur.

S. MAHAPATRA

16-1-2010

Presiding Officer
Labour Court
Sambalpur.

By order of the Governor

K. C. BASKE

Under-Secretary to Government